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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF WASHINGTON IN TACOMA

IN RE:

Steven Scott Stanley,
Bettina Lynn Stanley,

Debtors,

Steven Scott Stanley,
Bettina Lynn Stanley,

Plaintiffs,

v.

HSBC Mortgage Services,

Defendant.

Case No. 10-46874-bdl13

Adv. Proc. No.

COMPLAINT

Plaintiffs, Steven and Bettina Stanley, by and through their attorney, Kevin D. Swartz,
allege the following:

1.

This Adversary Proceeding is one arising out of the debtors' bankruptcy case number 10-46874-bdl13, filed under Chapter 13 of Title 11, now pending in this Court. This Court has jurisdiction over this Adversary Proceeding pursuant to 28 U.S.C. § 157, § 1334, and 11 U.S.C. § 523(b). This is a core proceeding under 28 U.S.C. § 157(b).

2.

1 Defendant, HSBC Mortgage Services, herein after HSBC, is authorized to conduct
2 business under the laws of the United States.

3 3.

4 Debtors filed Chapter 13 bankruptcy on August 20, 2010.

5 4.

6 Plaintiffs-debtors listed an interest in real property on Schedule A, legal description:

7 ALL THAT CERTAIN PROPERTY SITUATED IN THE COUNTY OF
8 PIERCE AND STATE OF WASHINGTON, BEING DESCRIBED AS
9 FOLLOWS: LOT1, BLOCK 3, MOUNT-NARROW FIRST ADDITION,
10 ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 21
11 OF PLATS, PAGE 22, IN PIERCE COUNTY WASHINGTON.

12 commonly known as 7402 South 15th Street, Tacoma, WA 98465, with a value of
13 \$268,000.00. See attached Exhibit A – CMA. The real property is situated in Pierce
14 County, Washington. This interest in real property is an interest of the bankruptcy estate.

15 5.

16 There are two secured claims against Plaintiffs' real property: MBNA America
17 (Delaware), N.A., hereinafter MBNA, in the amount of \$337,851.19, see attached Exhibit
18 B – POC MBNA, and HSBC in the amount of \$59,608.60, see attached Exhibit C – POC
19 HSBC.

20 6.

21 The first lien of MBNA is a consensual promissory note secured by a deed of trust
22 against the real property. The deed of trust was duly and properly recorded. The deed of
23 trust exists in the first position, and is superior to the second lien of HSBC.

24 7.

25 The second lien of HSBC arises out of a consensual promissory note secured by a
26 deed of trust against the real property. The deed of trust was duly and properly recorded.
27 The deed of trust exists in second position and is junior to the first lien of MBNA.

28 8.

1 The value of the property does not exceed the amount owed on the first lien to
2 MBNA.

3 9.

4 Pursuant to 11 U.S.C. § 506(a), the Court may bifurcate the value of the creditor's
5 interest in the estate's interest in the property into a secured claim and unsecured claim.
6 HSBC's second lien interest in the real property is a wholly unsecured claim.

7 10.

8 Pursuant to 11 U.S.C. § 1322(b)(2), plaintiffs may, in their plan, modify the rights of
9 holders of unsecured claims.

10 WHEREFORE, plaintiffs pray for relief as follows:

- 11 1. That the value of the real property is found to be \$268,000.00 AND
12 2. That HSBC's second lien interest in the real property is a wholly unsecured claim
13 AND
14 3. Requiring HSBC to execute such documents as are necessary to remove their lien
15 from the property records of Pierce County, Washington unless plaintiffs' Chapter
16 13 is dismissed or converted to a proceeding under another Chapter of Title 11 of
17 the United States Code AND
18 4. For plaintiffs' costs and disbursements incurred herein AND
19 5. For such other relief as the Court deems appropriate.

20 DATED this 12th day of November, 2010.

21 By /s/ Kevin D. Swartz
22 Kevin D. Swartz, WSBA #32609
23 Attorney for Plaintiffs
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